

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

UNITED STATES OF AMERICA,)
)
)
Plaintiff,)
)
) No. 3:08-CR-25
V.) (Phillips / Shirley)
)
)
SAMUEL MANNING,)
)
)
Defendant.)

MEMORANDUM AND ORDER

All pretrial motions in this case have been referred to the undersigned pursuant to 28 U.S.C. § 636(b) for disposition or report and recommendation regarding disposition by the District Court as may be appropriate. This matter came before the Court on the Motion for Psychological Evaluation [Doc. 15], filed March 7, 2008 by counsel for defendant A. Philip Lomonaco; and a Motion for Psychiatric or Psychological Evaluation [Doc. 16], filed by the government on March 10, 2008. Mr. Manning has also filed a notice of his intent to rely on the defense of insanity at trial, [Doc. 18]. At the hearing conducted on March 27, 2008, Mr. Manning was present with his counsel, A. Philip Lomonaco. Assistant United States Attorney Cynthia Davidson was present in behalf of the government. After considering the motions and the statements of counsel at the hearing, the Court concluded that the defendant should undergo a psychiatric or psychological evaluation pursuant to 18 U.S.C. § 4242 (a) and has entered a separate order to that effect. [Doc. 20].

At the time this hearing was conducted, this matter was scheduled to proceed to trial on April 8, 2008, before the District Court. Mr. Manning filed a Motion to Continue Trial Date and Motion

Deadline [Doc. 14] in order to accomplish the mental evaluation and to allow both parties to prepare for trial in light of the results. Counsel for Mr. Manning also states that despite the exercise of due diligence, a trial continuance is necessary in order to complete his factual investigation and trial preparation. Further, it will be impossible for Attorney Lomonaco to proceed with Mr. Manning's defense on the currently scheduled April 8, 2008, trial date as Attorney Lomonaco will be at trial in another case before the Honorable Judge Thomas A. Varlan beginning on April 7, 2008. At the hearing, the United States verbally joined in that motion. The Court finds the motion to continue the trial date to be well-taken and the parties have agreed on a new trial date of August 26, 2008, before the District Court.

The time during which the defendant is undergoing a mental examination is excludable under the Speedy Trial Act. 18 U.S.C. § 3161(h)(1)(A). Additionally, up to ten days of transportation time is excludable under the Act. 18 U.S.C. § 3161(h)(1)(H). Once the defendant returns from his examination, the Court will need to hold a competency hearing, the time for which will also be excludable. See 18 U.S.C. § 3161(h)(1)(F). If the defendant is found competent, the parties will need time to prepare for trial. See 18 U.S.C. § 3161(h)(8)(B)(iv). Accordingly, the Court finds that the ends of justice served by the continuance for an evaluation outweigh the best interest of the defendant and the public in a speedy trial. See 18 U.S.C. § 3161(h)(8)(A).

The Court also finds, and the parties agree, that all time between the filing of the initial motion for mental examination on March 7, 2008, and the new trial date of August 26, 2008, is fully excludable from operation of the Speedy Trial Act pursuant to 18 U.S.C. § 3161(h)(1)(A), (F),-(H), and 18 U.S.C. § 3161(h)(8)(A), (B).

It is therefore **ORDERED**:

1. Mr. Manning's original Motion to Continue Trial Date **[Doc. 14]** is **GRANTED**.
2. The trial of this matter is reset to commence on **August 26, 2008, at 9:00 a.m.** before the Honorable Thomas W. Phillips, United States District Judge.
3. The deadline for filing pretrial motions in this case is extended to **April 25, 2008**. Responses will be due on or before **May 9, 2008**.
4. The Court will conduct further proceedings as to Mr. Manning's evaluation on **June 9, 2008, at 9:30 a.m.**. If Mr. Manning has not been returned to the jurisdiction by that date, or a forensic report has not been received, the Court will instead hold a status conference at that date and time.
5. All time between the filing of the initial motion for mental examination on **March 7, 2008**, and the new trial date of **August 26, 2008**, is fully excludable from operation of the Speedy Trial Act pursuant to 18 U.S.C. § 3161(h)(1)(A).

IT IS SO ORDERED.

ENTER: *nunc pro tunc*, March 27, 2008.

s/ C. Clifford Shirley, Jr.
United States Magistrate Judge